IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1712/07

Shanti Lal Jaiswal **Versus** State & Anr.

DATE OF ORDER :: 22/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Ashwin Garg for Mr. R.K. Daga, for petitioner
Mr. Arun Sharma, Public Prosecutor for State
Mr. Keshav Agarwal, for respondent

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Instant petition has been filed assailing order dated 19th April, 2007 whereby application filed u/s.294 Cr.P.C. for taking certain documents on record was rejected by learned trial Judge and the revision petition also met the same fate.

Complainant-respondent filed a complaint for offence u/s.138 of Negotiable Instruments Act in regard to cheque of a sum of Rs.7,68,517/- which was dishonoured on 2nd May, 2003 for which complaint was filed on 11th June, 2003. After the statement of complainant was recorded, petitioner also submitted his defence and after the matter was finally riped up for hearing, accused-petitioner came with the application u/s.294 Cr.P.C. that certain amount has been paid either by DD or in cash to the complainant, as such there is nothing due which is payable and intend to file documents in this regard which learned

trial Judge has rejected on the premise that neither such question was put to the complainant in cross-examination nor in their own statement recorded u/s.313 Cr.P.C. and at this belated stage, request cannot be considered in the facts of instant case. Revisional court has also examined in detail about the effect of application which was filed by petitioner for taking certain documents on record and has not considered appropriate to grant permission at the stage of hearing.

Counsel for petitioner submits that documentary proof is available with regard to payment made to the complainant, of which specific reference has been made in the application filed u/s.294 Cr.P.C., but the court has not considered in its right perspective and denial of the same certainly caused great prejudice to him.

Per contra, counsel for respondent submits that after cheque was dishonoured, notice was served, neither in reply to notice nor at any later stage petitioner came out in defence about payment, if any, made in regard to cheque which was dishonoured. In such circumstances, filing of this petition is nothing, but to delay the proceedings and both the courts have rightly rejected application of petitioner.

This court has considered the submission and also perused the order impugned.

From the facts which have come on record that cheque dt.15/4/03 was dishonoured on 02/5/03 in regard to which complaint was filed and reference which has been made by petitioner in respect of part payment of the amount is of much prior to the issuance of cheque dishonoured and any payment earlier made before issuance of cheque being dishonoured will be of no significance. Even otherwise, if this was the defence of petitioner, it was expected from him to disclose at the first stage itself or at the stage of cross-examination.

This court does not find any substance to interfere in the order impugned.

Consequently, the misc. petition fails and is hereby dismissed.

[AJAY RASTOGI],J.